

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer. OR-26475 WA.

Affirmed.

1. Oil and Gas Leases: Lands Subject to--Wildlife Refuges and Projects:
Leases and Permits

BLM properly rejects a noncompetitive oil and gas lease offer under 43 CFR 3101.3-3(a) (1982) for land within the Columbia National Wildlife Refuge, which was withdrawn for the protection of all species of wildlife.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

D. M. Yates has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated December 9, 1982, rejecting noncompetitive oil and gas lease offer, OR-26475 WA.

On April 24, 1981, appellant filed a noncompetitive oil and gas lease offer for 788.31 acres of land situated in Grant County, Washington, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (Supp. V 1981). In its December 1982 decision, BLM rejected appellant's lease offer to the extent it included land within a national wildlife refuge. 1/

The record indicates that the subject land was withdrawn pursuant to Public Land Order No. (PLO) 243, dated September 6, 1944, "as a refuge and breeding ground for migratory birds and other wildlife, the reservation to be known as the Columbia National Wildlife Refuge." 9 FR 11400 (Sept. 15, 1944).

1/ The affected land is described as the S 1/2 S 1/2 sec. 32 and the S 1/2 N 1/2, S 1/2 sec. 34, T. 16 N., R. 25. E., Willamette meridian, Grant County, Washington. BLM also rejected appellant's lease offer with respect to the remaining land because it was included in an outstanding lease, OR-24649 WA, issued to Shell Oil Company. However, by decision dated Dec. 22, 1982, BLM rescinded its Dec. 9, 1982, decision to the extent it applied to land included in lease OR-24649 WA, which had been canceled on that same date.

The withdrawal applied to "all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws." Id. The applicable regulation, 43 CFR 3101.3-3(a)(1) (1982), provides that no oil and gas leases will be issued "covering wildlife refuge lands," except where the land is subject to drainage. 2/

In the statement of reasons for appeal, appellant contends that the subject land is available for oil and gas leasing because the land is not withdrawn from mineral leasing under PLO 243 and because the applicable regulation, 43 CFR 3101.3-3(a)(1) (1982), does not, itself, constitute a withdrawal. In the alternative, appellant argues that the regulation is not applicable because the subject land cannot be considered "wildlife refuge lands," which are defined as those lands "embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area." (Emphasis added.) 43 CFR 3101.3-3(a) (1982). Appellant states that PLO 243 applies only to the protection of migratory birds and similar animals, not "all species of wildlife." Appellant concludes that BLM should exercise its discretion to lease subject to appropriate stipulations or, at least, consider various alternatives other than rejection of appellant's lease offer.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected to the extent it includes "wildlife refuge lands," pursuant to the prohibition contained in 43 CFR 3101.3-3(a)(1) (1982). See, e.g., D. M. Yates, 73 IBLA 353 (1983); Altex Oil Corp., 73 IBLA 73 (1983). Moreover, the regulatory prohibition represents a formal exercise of the Secretary's discretion under section 17 of the Mineral Leasing Act, supra, to permit mineral leasing, apart from any exercise of his withdrawal authority. Therefore, the regulatory prohibition applies regardless of whether the withdrawal itself exempts mineral leasing. T. R. Young, Jr., 20 IBLA 333 (1975).

Appellant, however, argues that the subject land does not fall within the definition of "wildlife refuge lands," set forth in 43 CFR 3101.3-3(a) (1982). In D. M. Yates, supra, we expressly dealt with appellant's argument, holding that land within the Columbia National Wildlife Refuge, established by PLO 243, qualifies as "wildlife refuge lands" and, thus, is subject to the prohibition on oil and gas leasing under 43 CFR 3101.3-3(a)(1) (1982). We conclude that BLM properly rejected appellant's noncompetitive oil and gas lease offer, OR-26475 WA. See D. M. Yates, 74 IBLA 159, 161 (1983). 3/

2/ Effective Aug. 22, 1983, the Department renumbered the regulations applicable to oil and gas leasing in "wildlife refuge lands" as 43 CFR 3101.5-1 (48 FR 33665 (July 22, 1983)), with no substantive change in content. The current prohibition on oil and gas leasing, except in cases of drainage, is contained in 43 CFR 3101.5-1(b). Id.

3/ Even if the regulatory prohibition were not applicable in this case, the Secretary of the Interior has announced that it is the policy of the Department not to issue oil and gas leases in wildlife refuges outside Alaska except in cases of drainage. See BLM Instruction Memorandum No. 84-171, Change 1, dated Mr. 22, 1984.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

